80-297

FILED
JUL 21 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT of the UNITED STATES

October Term 1980

No.

CLARENCE H. HOLDING , PETITIONER

V.

BVA CREDIT CORPORATION, JOHN J DICKINSON, KENNETH L GRAY , HAROLD L. BRYANT , GEORGE T. MATTHEWS , DAVID M. SHAW, RESPONDANTS

PETITION FOR WRIT OF CERTIORARI

TO THE U. S. COURT OF APPEALS FOR THE

FOURTH CIRCUIT

CLARENCE H. HOLDING

COUNSEL FOR SELF PRO SE

FOR THE PETITIONER

1901 Woodbine Road

Richmond , Virginia 23225

QUESTIONS PRESENTED

1. Whether material facts or law were overlooked in the decisions.

2. Whether the apparent conflict of another decision of the court not addressed in the opinion .

3. Whether time and accrual time of statute of limitations on cases involving fraud and collusion should be considered in the case.

4. Whether the statute of limitations both federal and state are to be read with chancery precepts that they are to be suspended for fraud and collusion .

5. Whether strict rules relating to proof of discovery to begin running of statute of limitations applicable to fraud apply to fraud having it's inception in fiduciary relations.

6. Whether the two years statute of limitations for suit to recover , when the nature of the injury is such that it does not manifest itself immediately , determination of which cause of action accrued , but

rather the cause of action accrues and only when the plaintiff has reason to know he has been injured and generally this will be when his condition is diagnosed.

7. Whether the statute of limitations begin to run against the persons under disability as soon as the disability is removed , but unless a statute prescribes the maximum period that limitations may be tolled by disabilities , limitatbns time do not run until disability is removed.

8. Whether this case evolves from fraud and collusion in a fiduciary relationship which violated the constitutional rights of the petitioner due process causing grave great personal injuries and damages , loss of property , and business and rendered the petitioner totally disabled and should be compensated which is permanent .

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Cases Cited

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Other Authorities

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In The

SUPREME COURT of the UNITED STATES

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CLARENCE H. HOLDING ,

Petitioner,

V.

BVA CREDIT CORPORATION, JOHN J. DICKINSON, KENNETH L. GRAY , HAROLD L. BRYANT , GEORGE T. MATTHEWS, DAVID M. SHAW ,

Respondants.

PETITION FOR WRIT OF CERTIORARI

To the UNITED STATES COURT OF APPEALS

For the Fourth Circuit

To the Most Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

May it please the Court your Petitioner ask of you to grant this Petition for Writ of Certiorari for the decisions of the United States Court of Appeals for the Fourth Circuit entered March25, 1980 , on rehearing

April 24, 1980,and the decision of the United States District Court for the Eastern District of Virginia entered March 20,1979. The petitioner's constitutional rights guaranteed by the United States Constitution Six -th and Fourteenth Amendments therete- Due Process, and grave great personal injuries, suffering, loss of property , business, and damages were sustained and are permanent.

JURISDICTION

This Honorable Court's Jurisdiction is invoked under the United States Constitution the Sixth and Fourteenth Amendments therete - Due Process.

Also Part V Jurisdiction on Writ of Cert -iorari Rule 17 par .1. (a) and (c) of the Rules of the Supreme Court which states:

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter ; or has decided a federal question in a way in conflict with a

state court of last resort; or has so far departes from accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court , as to call for an exercise of this Court's power of supervision.

(c) When a state court or federal court of appeals has decided an important question of federal law which has not been , but shou -ld be, settled by this Court, or has decid- ed a federal question in a way in conflict with applicable decisions of this Court.

CONSTITUTION PROVISIONS INVOLVED

SIXTH AMENDMENT - Due Process

Fourteenth Amendment- Due Process

STATEMENT OF THE CASE

Your Petitioner plantiff owned an office building comprising one half a block in the business section adjacent the post office in Ashland, Virginia. BVA Credit Corporation ,John J Dickinson , Kenneth L. Gray, Harold L. Bryant, George T. Matthews, and Substitute

Trustee David M. Shaw, a member of Hunton & Williams law firm, knowingly and intentionall -y in collusion by their unconscionable acts defrauded the petitioner of his valauble office building property on a second deed of trust sold the property to BVA Credit Corporation , debtor creditor, for a ridiculious unheard of shocking grossly inadequate price of only $12,000 . The valuable office building was worth many times that amount. The property was appraised by their own professional appraiser and officer , Donald F. Ridenour at the time of the loan in 1973 for $55,000.00. Property in the immediate vicinity of similar vintage sold for in 1975 and 1976 for $150,000.00 and $177,000.00 respectfully. The petitioner was not at the saleher did he have knowledge of same was out of the city . BVA CREDIT CORPORATION, four officers cited above, and Substitute Trustee David M. Shaw all acted in bad faith

and in collusion knowingly and intentionally by their own unconscionable acts defrauded your petitioner of his valuable office property and caused your petitioner irreparable great grave personal injuries, suffering, and damages sustained which are permanent and lasting.

ARGUMENT

Most Honorable Justices of the Supreme Court of the United States , your Petitioner appears before you to plead his cause in the above styled case which evolves out of the misdeeds of BVA Credit Corporation, John J. Dickinson , Kenneth L. Gray , Harold l. Bryant , George T. Matthews , and Substitute Trustee, David M. Shaw, a member of Hunton & Williams law firm, who in collusion in a fiduciary relationship did knowingly and intentionally in collusion defrauded the Petitioner of his valuable property and caused your Petitioner great grave personal injuries, suffering , loss of business , and

loss of property, open heart surgery with three bypasses all are permanent and last -ing . Personal bodily injuries to health complained of were not definitely determined and diagnosed until July 25,1977 when open heart surgery with three bypasses were performed and heart troubles and totally disable now and permanent .

Statute of Limitations both federal and state are to be read with chancery precepts and they are suspended for fraud - case supporting, Kilduff v. U. S. 248 Fed Supp 310 VAI960 .

Two years statute of limitations for suit to recover , when the nature of the injury is such it does not manifest itself immediately the determination of which cause of action accrued does not depend on when the injury was inflicted , but rather the cause of action accrues only and only when the plantiff has reason to know he has been injured and generally this will be

when his condition is diagnosed. Case supporting , Portis v U S F 2d 670 Va. 1973.

The statute of limitations begins to run against persons under disability as soon as disability is removed, but unless a statute prescribes the maximum period that limitations may be tolled by disabilities, limitations do not begin to run until the disability is removed. Case supporting, Lauder v Nye County 88 P 2d 678, 59 nev 114. Also Fidelity & Deposit Co of Maryland v State 165 A 176, 164 Md 304 concur .

Strict rules relating to proof of circum-stances of discovery to begin the running of the statute of limitations applicable to ordinary fraud do not apply to fraud haveing it's inception in fiduciary relations. Case supporting - Goodrich v Naples 121 F Supp 345;Cal code civ proc sec 338 subd 4.

A party without any fault of his own who has been deprived of his remedy by some superior power , it has been held that the

statute of limitations will not run while the diability continues although it is not an exception in the statute of limitatons. Case supporting - U S San Francisco Saving Union v. Irwin CC Cal 28 F 708 Affirmed in Supreme Court 10 S Ct 1064 , 136 US 578 34 L Ed 540 .

Section 22 of the Statute of Limitations Act provides that in cases of fraudulent concelment an action may be brought at any time wibhin 5 years after the person entitled to bring it discovers that he has such action . Case supporting - Illinois Rev Stat 1969- Ath supporting ch 83 sec 23 says not subject to motion for lack of timeliness. Case supporting- Best Bearings v. Challenger Parts Rebuilders Inc. Ill App Ct 1973 294 NE ed 118 .

CONCLUSION

Your Petitioner, for the above stated facts, upheld by the cases cited and relied

on, statutes and authorities cited, plus the United States Constitution and the Sixth and Fourteenth Amendments thereto - Due Process, sustain and over whelmingly proves his cause before this Honorable Court . Your Petitioner has been severally injured personally causing open heart surgery with three bypasses, caused great damages , business , loss of property, and suffering by the unconscionable acts and bad faith in a fiduciary relationship of BVA Credit Corporation , four officers- John J. Dickinson , Kenneth L. Gray , Harold L Bryant, and George T. Matthews- and Substitute Trustee, David M. Shaw, a member of Hunton & Williams Law Firm. Your Petitioner ask this Court for compensatory and punitive damages in amounts ask for in the original complaint.

Respectfully submitted,

Clarence H. Holding

CLARENCE H. HOLDING

Counsel for self pro se

1901 Woodbine Rd, Richmond , Va 23225

CERTIFICATE

I certify I mailed postage prepaid three copies of the foregoing revised Petition for Writ of Certiorari to the counsel for the respondants, Benjamin C. Ackerly Hunton & Williams P. O. Box 1535 Richmond , Va. 23212, August 27,1980.

CLARENCE H. HOLDING
Clarence H. Holding
Counsel for self pro se

For the Petitioner

APPENDIX

EXHIBIT 1

United States March 20 , 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

CLARENCE H. HOLDING Plaintiff,	)
v	) Civil Action) No. 79-0117R
BVA CREDIT CORPORATION, et al., Defendants .	)

ORDER

Concluding that the matters of which plaintiff complains herein are barred by the statute of limitations applicable thereto, and deeming proper so to do , it is ADJUDGED AND ORDERED that the motion of the defendant to dismiss the complaint herein be, and the same is hereby granted , and this action stands dismissed .

Let the Clerk send copies of this order to the plaintiff and to counsel for the defendants.

A Copy

Teste: W. Farley Powers,
Clerk

App 2

EXHIBIT 2

United States March 25, 1980

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 79-1479

CLARENCE H. HOLDING ,

Appellant ,

V.

BVA CREDIT CORPORATION, HAROLD L. Bryant, JOHN J DICKINSON, KENNETH L. GRAY, DAVID M. SHAW, GEORGE T, MATTHEWS

Appellees.

PER CURIAM

Clarence H Holding, appearing pro se, appeals an order of the district court dismissing his suit in which he alleged that a foreclosure sale violated his right to due process of law entitling him to money damages. Defendants have moved for summary affirmance and damages or single or double costs. We grant the motion for summary affirmance and affirm.

The foreclosure sale was held on December 23,

1975. It was followed by an action for deficiency judgment which was served on Holding February 18,1876. On October 4,1976,he filed a counterclaim alleging fraud and collusion in the foreclosure. Thus, Holding probably knew of the foreclosure not later than Feb -ruary 18,1976; certainly he knew of his alleged claim arising out of the foreclosure before October 4 , 1976.

Holding filed the instant case February 6,1979. The Applicable Virginia statute of limitations is at most two years(Va Code ANN s 8.01-243);it maybe as short as one year(Va Code Ann s 8.01-248). In either event the district court was manifestly correct in sustaining defendant' plea of limitations.

Because plantiff appears pro se and for other reasons, we think this is an inappropriate case in which to award damages or costs other than the usual costs awarded to the prevailing litigant . Affirmed.

App 3 b

A Copy,

Teste: William K Slate II

Clerk

App 4

EXHIBIT 3

United States April 24,1980

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

NO. 79-1479

CLARENCE H. HOLDING,

Appellant,

v.

BVA CREDIT CORPORATION , et al,

Appellees.

ORDER

Upon consideration of the appellant's petition for rehearing , by counsel ,

It is ORDERED that the petition for rehearing is denied.

Entered at direction of Judge Winter for a panel consisting of Judge Winter, Judge Hall, and Judge Sprouse.

A Copy ,

Teste: William K. SlateII

Clerk

Supreme Court, U. S.
FILED
SEP 29 1980
MICHAEL RODAK, JR., CLERK

No. 80-297

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CLARENCE H. HOLDING,

Petitioner,

v.

BVA CREDIT CORPORATION, HAROLD L. BRYANT, JOHN J. DICKINSON, KENNETH L. GRAY, DAVID M. SHAW AND GEORGE T. MATTHEWS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BENJAMIN C. ACKERLY
JOHN A. LUCAS
Hunton & Williams
P. O. Box 1535
Richmond, Virginia 23212

Counsel for Respondents

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-297

CLARENCE H. HOLDING,

Petitioner,

v.

BVA CREDIT CORPORATION, HAROLD L. BRYANT, JOHN J. DICKINSON, KENNETH L. GRAY, DAVID M. SHAW AND GEORGE T. MATTHEWS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I.
STATEMENT OF THE CASE

This case arises out of a foreclosure sale of real estate belonging to the Petitioner. The pleadings, briefs, and petition for writ of certiorari filed by Mr. Holding are an almost incomprehensible welter of allegations relating to this fore-

closure. Reduced to their essence, these allegations seem to be that the Respondent, David M. Shaw, acting in collusion with the other Respondents, defrauded Mr. Holding by selling the foreclosed property for an inadequate price. In addition to various claimed violations of state law, Mr. Holding alleges that these acts constituted a violation of certain undefined constitutional rights, and seeks the sum of $20,150,000.00 in damages. All of the questions Mr. Holding seeks to present in his Petition for Writ of Certiorari, with the possible exception of the eighth question,* appear to relate to questions of state law.

Mr. Holding has previously sued the Respondents in the Virginia state courts, seeking to litigate his alleged claims arising out of this same foreclosure. When the Supreme Court of Virginia refused to grant his Petition for Appeal on April 11, 1978, Mr. Holding appealed to this Court, which dismissed his appeal on November 6, 1978. *Holding* v. *BVA Credit Corp.*, 439 U.S. 949 (1978).

Mr. Holding next filed the present action in the United States District Court for the Eastern District of Virginia in February 1979. In his Complaint, Mr. Holding essentially attempted to set forth the same cause of action that he had previously litigated unsuccessfully in the Virginia state courts. The district court (Merhige, J.) dismissed this action as barred by the Virginia statute of limitations; the United States Court of Appeals for the Fourth Circuit summarily affirmed on the same grounds. *See* Appendix to Petition for Writ of Certiorari, Exhibits 1 and 2.

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*The eighth question presented reads as follows;

> Whether this case evolves from fraud and collusion in a fiduciary relationship which violated the constitutional rights of the petitioner due process causing grave great personal injuries and damages, loss of property, and business and rendered the petitioner totally disabled and should be compensated which is permanent [sic].

II.

ARGUMENT

It is apparent that the issues Mr. Holding again seeks to present in his Petition For Writ of Certiorari do not warrant review by this Court. It is equally obvious that the actions of the district court and the Fourth Circuit of Appeals were manifestly correct. *See* Appendix to Petition For Writ of Certiorari, Exhibit 2. There simply is no basis for prolonging these proceedings, or for subjecting the Respondents to any further expense attendant to this vexatious litigation.

III.

CONCLUSION

For these reasons, the Petition For Writ of Certiorari should be denied.

Respectfully submitted,

BENJAMIN C. ACKERLY
Counsel for Respondents

September 26, 1980

BENJAMIN C. ACKERLY
JOHN A. LUCAS
Hunton & Williams
Post Office Box 1535
Richmond, Virginia 23212

CERTIFICATE

I certify that I have mailed three copies of the foregoing Respondents' Brief In Opposition To Petition For writ Of Certiorari to Clarence H. Holding, 1901 Woodbine Road, Richmond, Virginia 23225, this 26th day of September, 1980.

BENJAMIN C. ACKERLY